

Appl. No. 10/804,448

Attorney Docket No. 10541-1942

**II. Remarks**

Reconsideration and re-examination of this application in view of the above amendments and the following remarks is herein respectfully requested.

Claims 5-8, 14-17, and 26-27 remain pending. Claims 1-4, 9-13, 18-25 and 28 have been cancelled.

***Claim Rejections – 35 U.S.C. §103***

Claims 1-28 were rejected under 35 U.S.C. §103(a) as being unpatentable over European Patent 1388653 (Cornaglia) in view of Japanese Publication 03-107522 to Nakachi (Nakachi).

Claim 5 and 14 include that the moveable member decreases the first volume as the rpm of the engine increases and while the first valve is opened. In addition, claims 5 and 14 provide that based on a change in the rpm of the engine the first valve closes and the second valve opens, such that the moveable member decreases the second volume corresponding to increasing the rpm of the engine while the second valve is opened. Claims 5 and 14, therefore, provide a unique interdependency between the motion of the moveable member to increase or decrease the first and second volumes and the opening/closing of the first and second valves. As described in the specification, this is of particular use in a situation where the transmission shifts and an abrupt change in the rpm results. As such, the moveable member provides a smooth change in frequency attenuation by decreasing one volume while adjusting the other volume in preparation of a transmission shift. Accordingly, when the shift occurs, the valves switch state providing for a near instantaneous adjustment with the engine rpm while still providing a smooth volume adjustment between shifts.

Cornaglia teaches only a moveable member to adjust volumes, while JP '522 only teaches valves to switch between multiple resonator geometries. While Cornaglia and JP '522 do teach some of the independent elements, clearly they do not teach the interdependencies between the valves, the volumes, and the moveable member that provide a system capable of both smooth and instantaneous adjustments to the volume in the manner claimed.

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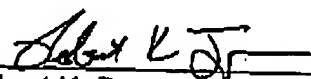
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Claims 6-8, 15-17, and 26-27 depend from claims 5 or 14 and are, therefore, patentable for at least the same reasons as given above in support of claims 5 and 14.

*Conclusion*

In view of the above amendments and remarks, it is respectfully submitted that the present form of the claims are patentably distinguishable over the art of record and that this application is now in condition for allowance. Such action is respectfully requested.

Respectfully submitted by,

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